

**IMPLEMENTED LAST , BEST  
AND FINAL OFFER  
BETWEEN  
THE CITY OF  
CALEXICO  
AND  
CALEXICO MUNICIPAL  
EMPLOYEES' ASSOCIATION**

**TERM: JULY 1, 2009 THRU  
JUNE 30, 2010**

# **CMEA**

## **IMPLEMENTED LAST, BEST AND FINAL OFFER FOR THE CALEXICO MUNICIPAL EMPLOYEES' ASSOCIATION**

**Term: July 1, 2009 to June 30, 2010**

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**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE CITY OF CALEXICO  
AND IMPLEMENTED LAST, BEST AND FINAL OFFER FOR THE CALEXICO  
MUNICIPAL EMPLOYEES' ASSOCIATION**

**TERM:**

**July 1, 20098 to June 30, 20109**

This Implemented Last, Best, and Final Offer ("Implemented LBFO") is Memorandum of Understanding (MOU) is by and between the City of Calexico (City) and the Calexico Municipal Employees' Association (Union).

**ARTICLE 1 — RECOGNITION AND STATUS OF IMPLEMENTED LBFO MOU**

**Section 1- Recognition:** The City recognizes the Union as the exclusive bargaining representative with respect to all matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours and other terms and conditions of employment pursuant to California Government Code Section 3500 *et seq*, for all of its employees within the bargaining unit except those employees lawfully designated as management or confidential.

**Section 2 – Ratification:** ~~This MOU is of no force or effect until ratified and approved by the Union membership and by the City Council through a duly adopted Resolution. This Implemented LBFO is effective pursuant to Resolution No. 09-62 approved by the City Council to unilaterally implement the terms and conditions of employment. Upon ratification, this MOU~~ This implemented LBFO reflects the sole agreement of the parties thereto and supersedes all prior agreements whether written or oral. Prior to implementation of this Implemented LBFO, ratification of this MOU by both parties, the MOU previously in place will govern any matters.

**Section 3 – Scope of Recognition:** The scope of representation is as set forth in City Council Resolution No. 2204, entitled: "Resolution of the City Council of the City of Calexico Pertaining to Employer-Employee Relations for the City of Calexico," dated July 7, 1970, as amended.

**Section 4 – Rules and Regulations:** All bargaining unit members shall be subject to the City's Personnel Rules and Regulations. ~~During the 2006-2007 Fiscal Year, the bargaining unit shall assist the City in upgrading its Personnel Rules and Regulations. The bargaining unit shall assign a member to participate in a management-labor committee for the formulation of an amended set of City Rules and Regulation. No amendment to the Personnel Rules and Regulations shall amend or modify any provision found in this Implemented LBFO, MOU, except where necessary to comply with federal, state or local law. No provision in these Procedures shall conflict with federal, state or local law. Any changes to the Personnel Rules and Regulations impacting wages, hours or terms and conditions of employment shall be subject to meet and confer with the Union.~~

***(Substantive changes indicated in this Section made per Tentative Agreement between the parties and implemented by City Council in Resolution No. 09-62.)***

## **ARTICLE 2 — MANAGEMENT RIGHTS**

The Union agrees that the City retains and has the exclusive decision-making authority to manage municipal services and the workforce performing those services so long as the City exercises such exclusive authority in conformance with the express specific terms of this Implemented LBFO-MOU.

The Union further agrees that the City has, except as expressly and lawfully restricted by specific provisions of this Implemented LBFO-MOU, the exclusive decision-making authority to:

Determine and modify the organization of City government and its constituent work units.

Determine the nature, standards, levels and mode of delivery of services to be offered to the public.

Determine the methods, means and the numbers and kinds of personnel by which services are to be provided.

Determine whether goods or services shall be made, purchased or contracted for.

Direct employees, including scheduling and assigning of work and overtime.

Establish employee performance standards and require compliance therewith.

Discharge, suspend, demote, reduce in pay, reprimand, withhold salary increases and benefits or otherwise discipline employees subject to the requirements of applicable law.

Relieve employees from duty because of lack of work or lack of funds or for other legitimate reasons.

Implement rules, regulations and directives consistent with law and the specific provisions of this Implemented LBFO-MOU.

Take all necessary actions to protect the public and carry out its mission in emergencies.

Decisions under this Article shall not be subject to the grievance procedure herein, unless the City is in violation of this Implemented LBFO-MOU.

## **ARTICLE 3 — EMPLOYEE AND UNION RIGHTS**

### **Section 1- Union Business:**

- A. There shall be a reasonable amount of shop stewards appointed in order to facilitate the policing of this Implemented LBFO-MOU. These appointments shall be made by the Union representative.
- B. Stewards ~~Job-representatives~~, local Union officers and employees shall be entitled to seek and obtain assistance from Union staff personnel, for the purpose of processing grievances and matters related thereto and other reasons relating to wages, hours and terms and conditions of employment covered by this Implemented LBFO-MOU or the law.

***(Substantive changes indicated in this Section made per Tentative Agreement between the parties and implemented by City Council in Resolution No. 09-62.)***

- C. One officer of the Union shall receive paid release time, subject to reasonable regulation by the City, in order to conduct proper Union business.

**Section 2 - Bulletin Boards:** A bulletin board accessible at each job site for posting of notices to employees will be provided by the City at each work site, and will be marked "SERVICE EMPLOYEES INTERNATIONAL UNION/CALEXICO MUNICIPAL EMPLOYEES ASSOCIATION ('SEIU/CMEA')."

**Section 3 - Documentation:** The Union shall have the right at reasonable times to review and/or receive any documents required for Meyers-Millas-Brown Act purposes in the City's possession. The City shall provide the Union each year with a list of employees within the bargaining unit, their designated work sites and positions/classifications.

**Section 4 - Non-Discrimination:** Neither the City nor the Union shall discriminate against any employee covered by this Implemented LBFO-MOU on the basis of race, color, sex, religion, national origin, sexual orientation, age, physical handicap, or for exercising any employee rights contained in this Implemented LBFO-MOU or the law. The parties recognize the right of employees to form, join and participate in lawful activities of employee organizations, and the equal and alternative right of employees to refuse to form, join or participate in employee organization activity. The City and the Union agree that no employee hereunder will be coerced or discriminated against because of membership or lack of membership in the Union, or because of lawful activity or inactivity on behalf of the Union.

**Section 5 - Use of Facilities:** Upon request and without charge, the Union shall be granted the right to use City facilities for lawful Union business. The conditions of such use shall be consistent with applicable law, and permission shall not be unreasonably withheld.

**Section 6 - Union Mail Slot:** The City shall provide a mail slot for the Union at City Hall.

**Section 7 - Notice Requirements:** Notices required by this Implemented LBFO-MOU or by law shall be delivered either by hand or Certified U.S. Mail to the Chapter President and to SEIU Local 221, 4004 Kearny Mesa Road, San Diego, CA 92111. The Union shall provide the City with the name and contact information for the Chapter President each year, and as the information changes.

***(Substantive changes indicated in this Section made per Tentative Agreement between the parties and implemented by City Council in Resolution No. 09-62.)***

**Section 8 - Personnel Files:**

- A. The personnel file of each employee shall be maintained at the City's Human Resources Department, and shall not be removed for any reason. Any files kept by any supervisor of any employee shall not contain any material that is not in the main personnel file. No adverse action of any kind shall be taken against an employee based upon materials which are not in the personnel file.
- B. An employee shall be provided with copies of any derogatory written material 5 workdays before it is placed in the employee's personnel file. The employee shall be given an opportunity during normal working hours, and without loss of pay, to initial and date the material and to prepare a written response to such material. The written response shall be provided to the City within 5 business days after the employee has been provided the copies of the material, and the written response shall be attached to the material.
- C. An employee shall have the right at a reasonable time without loss of pay to examine and/or obtain copies of any material from the employee's personnel file. The employee must obtain the approval of his/her immediate supervisor.
- D. All personnel files shall be kept in confidence and shall be available for inspection by authorized employees of the City only when actually necessary in the proper administration of the City's affairs or the supervision of the employee. The City shall keep a log indicating the persons who have examined a personnel file, as well as the date such examinations were made. Such log and the employee's personnel file shall be available for examination by the employee or his/her Union representative if authorized by the employee. The log shall be maintained in the employee's personnel file.
- E. Upon written request from the employee, all written warnings and reprimands, or copies thereof, will be removed from the employee's official personnel file and any supervisor's working file after the time limits described in Appendix C: minor offenses removed within 12 months; major offenses removed after 24 months.



## **ARTICLE 4 - WORK SCHEDULES**

**Section 1 - Changes in Shift Assignment:** The City shall not change working hours or shift assignments of employees or positions except for lawful purposes in the exercise of its management rights.

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**Section 2 - Rest Breaks:** Two 15-minute rest breaks shall be granted to employees each workday and shall be scheduled at or about midpoint between the start of the shift and the meal period, and midpoint between the meal period and the end of the work shift.

**Section 3- Meal Periods:** With the exception of public safety dispatchers, all employees shall be entitled to a minimum 30-minute duty free lunch period which shall be scheduled at or about the midpoint between the start of the shift and the meal period, and the midpoint between the meal period and the end of the work shift. Public safety dispatchers shall remain on-call during a paid 30-minute lunch period. Public safety dispatchers shall remain in a designated area during their meal break.

**Section 4 – Alternate Hours/Days of Week:** The City shall implement a 9/80 work schedule for all non-safety employees effective no later than January 1, 2009.

## **ARTICLE 5 — COMPENSATION AND OVERTIME PAY**

**Section 1 - Work Day:** The workday begins at 12:00 midnight and extends through 11:59 p.m.

**Section 2 - Hourly Rate:** The regular (straight time) hourly rate of pay is determined by multiplying the monthly salary by 12 and dividing the result by 2,080.

### **Section 3- Overtime Rates:**

- A. FLSA overtime is all time worked in excess of 40 hours in the employee's work week and is paid at 1.5 times the employee's regular hourly rate (including premiums such as night shift differential.) Paid leaves, including sick leave, holidays and vacation, are considered time worked for the purpose of computing any overtime.
- B. Any work ordered, authorized, permitted or suffered shall be considered time worked for the purpose of computing overtime. An employee must receive permission from his/her immediate supervisor prior to working overtime. The City shall not allow employees to perform regular or overtime work without the payment of compensation at the applicable rate of pay.

**Section 4 - Compensatory Time Off:** Bargaining unit members may receive, at their election, up to 240 hours of compensatory time off (CTO), in lieu of cash FLSA

overtime, at a rate of 1.5 hours for each hour of FLSA overtime worked. Once a unit member accrues 240 hours of CTO, the City shall pay FLSA overtime compensation in cash. The City shall not unreasonably deny a bargaining unit member the use of CTO.

**Section 5 - Standby Time:** An employee who is required during his/her off-duty time to remain accessible by telephone or "beeper" and who is required, upon notification, to respond to work is considered to be on "standby". An employee on standby during his/her workweek shall receive 6 hours pay each day (whether or not he/she is actually called out for work during that workweek) in addition to any call-out overtime actually worked.

**Section 6 - Call-Back Pay:** An employee who has been released from work and has left the work premises and who has not been scheduled, shall, if he/she is called back to duty, be paid a minimum of 2 hours. If the actual time traveling to and working a call-back to duty exceeds 2 hours, the employee is entitled to receive 4 hours pay. If the actual time traveling to and working a call-back to duty exceeds 4 hours, the employee is entitled to 6 hours pay. Call back time is paid at 1.5 times. Travel time shall be compensated accordingly only if travel time is within the County of Imperial. The employee shall be released from duty when he/she completes the given assignment.

**Section 7 - Out-of-Class Pay:** An employee shall be compensated an additional six dollars (\$6.00) per day for each day he/she is assigned in writing to work out of class, beginning with the first day.

**Section 8 - Differential Pay:** If the employee's normal working hours are between 6:00 p.m. and 7:00 a.m., the employee will be entitled to a 7% per hour differential pay. The 7% will be calculated on the employee's current hourly rate. The regularly assigned night Street Sweeper will be entitled to a 7½% pay range differential.

**Section 9 - Report Time Guarantee:** There shall be a guarantee of 4 hours to any employee reporting to work on his/her scheduled day.

**Section 10 - Uniform Allowance:**

- A. The uniform allowance for miscellaneous police personnel who are required to wear uniforms will be \$500.00 per year.
- B. The City will provide bargaining unit members with \$200 boot allowance for the purchase of CalOSHA safety boots.
- C. Implementation of the boot allowance will remain consistent with other employee groups receiving the boot allowance. If the City changes how the boot benefit is provided to other groups, such as a purchase order rather than an allowance, this bargaining unit members' benefit shall also be changed to stay consistent without need for negotiation.

## **Section 11 – Merit and Longevity Increases:**

**(a) Longevity Pay Increases:** Bargaining unit members hired before January 1, 2002, are entitled to longevity pay according to the following schedule: \$20.00 per month for 5 years of continuous service; an additional \$30.00 per month for 10 years of continuous service; an additional \$40.00 per month 15 years of continuous service; an additional \$50.00 per month for 20 years of continuous service; an additional \$60.00 per month for 25 years of continuous service. This benefit is deleted for all employees hired on or after January 1, 2002. All existing employees shall be entitled to receive longevity pay until their employment with the City of Calxico is terminated.

**(b) Merit Increases:** Employees hired on, or after, January 1, 2003, shall be hired at Step 1 of the salary schedule and will move to higher steps based on merit in the following manner:

<b><u>FROM</u></b>	<b><u>TO</u></b>	<b><u>TIME</u></b>	<b><u>MERIT EVALUATION</u></b>
Step 1	Step 2	9 months	"Standard" or better
Step 2	Step 3	1 year	"Standard" or better
Step 3	Step 4	1 year	"Standard" or better
Step 4	Step 5	1 year	"Standard" or better

"Standard" = 71% or better

Employees hired before January 1, 2003, shall move to higher steps based on merit in the following manner:

<b><u>FROM</u></b>	<b><u>TO</u></b>	<b><u>TIME</u></b>	<b><u>MERIT EVALUATION</u></b>
Step 1	Step 2	6 months	"Standard" or better
Step 2	Step 3	1 year	"Standard" or better
Step 3	Step 4	1 year	"Standard" or better
Step 4	Step 5	1 year	"Standard" or better

"Standard" = 71% or better

Failure of the City to issue a timely Merit Evaluation on a form, prior to the anniversary date, mutually agreed to between the City and the Union, shall be treated as a "Standard" evaluation and shall cause the employee to be awarded the appropriate step increase.

## **Section 12 – Professional Development Program:**

For bargaining unit members who were hired prior to January 1, 2006, the member not on initial hire probation shall be paid for all college degrees earned from an accredited

institution of higher education, pursuant to the following non-cumulative education incentive pay (an employee transferring from another City department shall be considered an initial hire for the purposes of this section).

Tuition reimbursement will be available to bargaining unit members hired prior to January 1, 2006, providing that the tuition reimbursement procedure is followed in accordance with the policy, and the department can sustain the expense.

A. A salary adjustment of 5% upon completion of an AA or AS degree with a grade of "C" or better (but no unit member will receive more than one salary increase under this provision);

B. If the unit member previously received a salary increase of 5% upon completion of an AA or AS degree, the unit member shall receive a salary adjustment of 5% upon completion of a BA or BS degree (but no unit member will receive more than one salary increase under this provision). If the unit member did not previously receive a salary increase upon completion of an AA or AS degree, the unit member shall receive a salary increase of 10% upon completion of a BA or BS degree (but no unit member will receive more than one salary increase under this provision).

No unit member shall receive more than a total salary adjustment of ten percent (10 %) under this section during the member's employment with the City. This provision will apply only to unit members hired prior to January 1, 2006. However any unit member receiving a salary adjustment for college units (either a 2.5, 5, or 7.5 percent), under an MOU effective prior to October 1, 2002, will continue to receive that salary adjustment during his/her employment in the bargaining unit, until he/she qualifies for a higher adjustment under this provision. A unit member receiving 5% adjustment for units under a former MOU will, upon qualifying for an AA or AS degree adjustment, receive only one such adjustment, as all adjustment are non-cumulative. All unit members hired on or after January 1, 2006 shall not receive any benefits under this Section.

Under this Professional Development Program, eligibility for the above-described salary adjustment is subject to the following conditions: (1) The employees interested in career advancement shall submit a request describing the educational opportunities to their department heads for review and consideration. The request must be job related and specific to the employee's position and department. (2) If the department head finds that the educational opportunity or degree obtained is specific to the employee's position with the City, then the department head will grant the applicable salary adjustments.

***(Substantive changes indicated in this Section made per Tentative Agreement between the parties and implemented by City Council in Resolution No. 09-62.)***

**Section 13 - Bilingual Dispatcher Pay:** Those dispatchers who are bilingual receive an additional 3%. Dispatchers who receive bilingual dispatcher pay pursuant to this section are not entitled to any other bilingual pay differential.

**Section 14 - Confidential Pay:** The persons employed as of March 8, 2000 in the classifications listed in item 3 of the 3/3/00 Addendum to MOU between the City of Calexico and the Calexico Municipal Employees' Association will continue to receive the benefit of that item as long as they are employed. The benefit described in item 3 is null and void except as described here.

**Section 15 – Cost of Living Increases:**

No cost of living salary adjustment shall be provided for the duration of the term of this Implemented LBFO-MOU.

~~**Section 16 – Work Furlough:** Provided all City employees are subject of work furlough, the employees in this bargaining unit agree to an eighty (80) hour work furlough for fiscal year, effective July 1, 2008. The first thirty two (32) hours of the work furlough period shall occur between the holidays of December 25 (Christmas Day) and January 1 (New Year's Day) this fiscal year. The remaining forty eight (48) hours shall remain in a furlough leave balance account for each employee, which must be used during the fiscal year in which they are credited, according to subsections (A) through (D) below. In classifications where staffing of positions will be necessary during the furlough period, those employees required to work will retain the number of furlough hours actually worked up to thirty two (32) hours.~~

Employees agree to a work furlough for fiscal year 2009-2010, effective July 1, 2009, in the amount of 80 hours. An amount equivalent to 80 hours of pay will be deducted from each employee's salary in fiscal year 2009-2010. The furlough hours shall remain in a furlough leave balance account for each employee, which must be used during fiscal year 2009-2010, according to subsections (A) through (E) below. Work furlough is subject to the following rules:

- A. Employees' regular paycheck shall be reduced by an amount reflecting the work furlough.
- B. The use of furlough hours must be pre-approved by employee's immediate supervisor. In cases where approvals relating to which employee within a particular classification will work during the furlough period, seniority shall not be the sole determining factor. Consideration shall also be given to employee preferences, equity, and needs of the employee's Department and the City.

- C. Furlough hours will be prorated for new hires, terminating employees, and employees who have an established schedule of three-quarter (3/4) time or less.
- D. Employees scheduled to be off during the furlough period, who are called in to work due to operational necessity, shall have the option of having the appropriate number of hours of furlough leave credited to their furlough leave bank or receiving overtime compensation for the actual hours worked.
- E. In consideration of participation in the work furlough program described herein, each bargaining unit member shall be awarded one floating holiday in fiscal year 2009-2010. This floating holiday shall be awarded in fiscal year 2009-2010 solely on the condition that bargaining unit members participate in the work furlough program as described herein. The floating holiday must be used during fiscal year 2009-2010, to bring the total number of floating holidays per year to three.

***(Substantive changes indicated in this Section made per Unilateral Implementation by the City Council in Resolution No. 09-62.)***

**Section 17 – Increased Certification Grade:** Upon attaining a Distribution or Collection certificate from the State of California required by the Department, a bargaining unit member will be paid a salary adjustment equal to 2.5% of base salary for so long as the employee maintains the valid certification. This will not result in a reclassification or promotion. Effective January 1, 2007, possession of these certificates will be minimum position qualifications for all bargaining unit members in these job classifications and the stipend will be converted into base salary as a reclassification.

## **ARTICLE 6 — RESIGNATION AND DISCIPLINE**

**Section 1 - Resignation:** An employee may voluntarily separate from employment with the City. A month's notice of intended separation is desired so that management may have sufficient time to obtain a necessary replacement, and minimum of 2 full weeks is strongly recommended.

**Section 2 - Just Cause:** Discipline shall be imposed on permanent employees only in accordance with the terms of this Article and for just cause, consistent with and subject to applicable law.

- A. Probationary employees may be dismissed at any time during the probationary period and without just cause and such action shall not be subject to this or the grievance procedure or any other appeal process so long as the dismissal notice indicates only that the dismissal is a "probationary release."

- B. Progressive discipline shall be used regarding matters such as: unsatisfactory job performance; infraction of procedures, tardiness, abuse of leave time, or excessive absences. Progressive discipline shall consist of the following 4 steps: 1) verbal, 2) written warning, 3) suspension not to exceed 5 days, and 4) suspension and/or dismissal.
- C. A supervisor's report shall contain a description of the events requiring the disciplinary action, and a remedial plan outlining steps for the employee to correct the situation. Such reports shall be placed in the employee's personnel file for each step taken.

**Section 3 - Appeal of Disciplinary Action:** A permanent employee has the right to appeal discipline that involves a loss of pay to the Personnel Commission pursuant to Municipal Code Chapter 2.20. A final, written notice of discipline will inform or remind the employee of this right.

## **ARTICLE 7 — GRIEVANCE PROCEDURE**

**Section 1 - Purposes:** This Article is intended to provide the means for employees, recognized employee organizations, and management to resolve grievances in an orderly manner within a reasonable time period; and to administer employer-employee relations through uniform and orderly methods of communication between employees and management.

### **Section 2 - Policy:**

- A. Any bargaining unit member has the right to file a grievance without fear, intimidation, or coercion from any party;
- B. Any bargaining unit member may represent him/herself or request the assistance of a Union Representative or steward at any or all steps in the grievance procedure up to Advisory Arbitration;
- C. Grievances may be initiated by the employee, or the Union;
- D. The bargaining unit member's or Union's first contact regarding job and working conditions is with the immediate supervisor and the supervisor shall attempt to settle grievances informally at that level;
- E. The immediate supervisor is responsible for informing employees about job requirements, personnel policies, and the work unit's relationship to the division, department and the City as a whole;
- F. A grievant and steward (if selected) may attend a grievance meeting with a supervisor on his/her own behalf without loss of pay. A steward and/or Union

) representative may represent him/her at such grievance meeting without loss of pay.

**Section 3 - Definition:** A grievance is a claim, charge or dispute involving the following:

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- A. The interpretation or application of any City rules, regulations, ordinance, resolution affecting an employee's wages, hours or conditions of work; or
- | B. The interpretation or application of the provisions of this Implemented LBFO MOU.
- C. Notwithstanding subsections (A) and (B) above, a grievance does not include any challenge to a disciplinary action.

**Section 4 - Informal Grievance Procedure:** The informal complaint procedure must be used before the formal grievance procedure. The grievant shall discuss his/her complaint with his/her immediate supervisor no later than ten (10) working days after the occurrence of the incident causing the grievance. If the immediate supervisor fails to reply within five (5) working days, or the grievant determines he/she is not satisfied with any decision within five (5) working days after receiving it, the grievant may utilize the formal grievance procedure.

**Section 5 - Formal Grievance Procedure:**

- A. The formal grievance procedure shall be initiated not later than thirty (30) days after the discussion with the immediate supervisor in the informal procedure.
- B. The formal grievance shall be initiated by the filing of a written grievance, within the time period set forth above, on a form provided for this purpose. The form shall contain:
  - 1. Name of Grievant
  - 2. Class Title
  - 3. Department
  - 4. Grievant's mailing address
  - 5. A clear statement of the nature of the grievance citing applicable ordinance, rules, regulations or action
  - 6. The date upon which such grievance occurred
  - 7. The action taken as a result of the informal complaint procedure
  - 8. A proposed solution to the grievance
  - 9. Date of execution of the grievance form
  - 10. Signature of the grievant



11. The name of the organization or individual, if any, representing the grievant

C. The following steps are to be used to resolve the formal grievance:

**Step 1.** The written grievance shall be filed and presented to the second-level supervisor, who shall investigate the grievance and shall confer with the grievant, his/her representative, and any other employee or employees in an attempt to resolve the grievance. Within ten (10) working days after the written grievance is first submitted to second-level supervisor, said second-level supervisor shall make and file a decision in writing with the grievant, his representative and the Human Resources Department.

**Step 2.** If the issue is not resolved in Step 1, said written grievance shall be filed, with the department head, within not more than ten (10) working days from the receipt of the supervisor's response. A copy of such request shall be delivered to the Human Resources Department. Within ten (10) working days after the written grievance is first submitted to the department head, the department head shall make and file a decision in writing with the grievant, his/her representative, and the Human Resources Department.

**Step 3.** If the department head does not resolve the grievance to the satisfaction of the grievant, the grievant may, within not more than ten (10) working days from receipt of the department head's decision, request in writing that the City Manager or his/her designee consider the grievance. A copy of the request filed by the grievant shall be submitted to the Human Resources Department.

Within 10 working days after such request, the City Manager or designee shall investigate the grievance, confer with the persons affected and the grievant's representative, and seek through a meeting of the parties to resolve the matter by agreement between the parties.

**Step 4.** Advisory Arbitration of Grievance: In the event that the grievance is not resolved by agreement between the parties, the Union may, within thirty (30) calendar days after the meeting in which the parties failed to reach agreement, request that the grievance be heard by an arbitrator. A grievance involving a letter of warning shall not be subject to arbitration.

- (a) Selection of Arbitrator: The arbitrator shall be selected by mutual agreement between the City and the grievant or his/her representative. If the City and the grievant or his/her

representative are unable to agree on the selection of an arbitrator, they shall jointly request the State Mediation and Conciliation Service to submit a list of five qualified arbitrators. The City and the grievant or his/her representative shall then alternately strike names from the list until one name remains, and that person shall serve as arbitrator.

- (b) **Duty of Arbitrator:** Except when an agreed statement of facts is submitted by the parties, it shall be the duty of the arbitrator to hear and consider evidence submitted by the parties and to thereafter make written findings of fact and a proposed disposition of the grievance which shall be submitted to the City Manager. The decision of the arbitrator shall be based solely on the interpretation of the appropriate provisions of the MOU or this Implemented LBFO applicable to the grievance, and he/she shall not add to, subtract from, modify or disregard any of the terms or provisions of this Implemented LBFO or the applicable MOU ~~the MOU~~. The decision of the arbitrator shall be advisory to the City Manager who shall render a final written decision within ten (10) working days of receipt of the decision of the arbitrator.

The provisions for arbitration are not intended and shall not be construed to empower an arbitrator to change any condition of employment specifically covered by this Implemented LBFO or the applicable MOU ~~the MOU~~, or to revise, modify or alter, in any respect, any provision contained in this Implemented LBFO or the applicable MOU ~~the MOU~~.

- (c) The City Manager's or designee's decision shall be final, and is not subject to appeal.
- (d) **Payment of Costs:** Each party to a hearing before an arbitrator shall bear his own expenses in connection therewith. All fees and expenses of the arbitrator shall be borne one-half by the City and one-half by the grievant.

#### **Section 6 - Time Limits:**

- A. The time limits of each step may be extended by mutual consent of the parties. The duration of the extension shall be in writing and signed by both parties involved at the step to be extended.
- B. If any grievance is not appealed within the stated time limits, or extensions of any of the above steps, the grievance shall be considered conclusively settled on the

basis of the last disposition by appropriate authority. No further City appeal or review is available.

- C. If a supervisor or other appropriate authority fails to furnish a response within the required time limits, or extensions, of any of the above steps, the employee or Union may proceed with the grievance at the next appropriate step.

## **ARTICLE 8 — HOLIDAYS**

**Section 1- Observed Holidays:** The following days will be observed as holidays for city employees.

New Year's Day	January 1st	Washington's Birthday	Feb Two (2) Floating Holidays
Veteran's Day	Nov	Labor Day	September
Martin Luther King's Day		Cesar Chavez Day	March
Admission Day	Sept	Thanksgiving Day	Nov
Memorial Day	May	Friday after Thanksgiving	Nov
Independence Day	July 4	Christmas Day	Dec 15

**Section 2 - Weekend Holidays:** When a holiday herein falls on a Sunday, the following Monday shall be deemed to be the holiday. When a holiday herein falls on a Saturday, the preceding workday not a holiday shall be deemed to be the holiday.

**Section 3 - Holiday Credit:** In order to receive credit for a holiday, an employee must be in paid status during any portion of the workday of their normal assignment immediately preceding or succeeding the holiday.

**Section 4 - Paid Status Defined:** Time during which an employee is excused from work because of holidays, sick leave, vacation, compensating time off or other paid leave of absence shall be considered as paid status.

**Section 5 - Additional Holidays:** Any day declared by the President or Congress of the United States, or the Governor or Legislature of this State as a public fast, thanksgiving or holiday shall be considered a paid holiday and subject to the provisions of this Implemented LBFO-MOU.

**Section 6 - Holiday Records:** All holidays are to be recorded for each employee and must be reported on the payroll time sheets.

### **Section 7 - Holiday Pay:**

- A. An employee who is required to work on a holiday shall receive his/her applicable rate of pay (either regular or overtime) for all hours actually worked on that holiday at a 1.5 rate, at the option of the employee, in either: 1) cash compensation for actual hours worked; or 2) compensatory time off.

- B. If an employee is not required to work on a holiday because it is observed on his/her regularly scheduled day off, the employee has the option of receiving either of the following at a straight time rate: 1) 8 hours pay; or 2) 8 hours compensatory time off.
  - C. If an employee is not required to work on a holiday, and if the holiday is not observed on one of his/her regularly scheduled days off, the employee will take the holiday off and will receive 8 hours pay at the straight time rate.
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## **ARTICLE 9 — SICK LEAVE**

### **Section 1 - Sick Leave- Regulations:**

- A. Every person who has been continuously employed by the City for 180 days, except temporary, seasonal or part-time employees, shall receive 8 hours of sick leave with pay for each full month of employment or major portion thereof.
- B. Sick leave credit may be accumulated without limitation.
- C. A bargaining unit member may use: 1) sick leave for his or her own actual illness or injury; and 2) up to 48 hours of sick leave per year to attend to the illness of the member's child, spouse, or parent.
- D. If sick leave for illness or injury exceeds 3 working days, the employee, prior to return to work, shall submit a statement of such disability from a physician, surgeon or other person practicing a recognized healing art. The statement shall certify that the employee's physical condition prevented him/her from performing the duties of his position during the period of absence. The physician statement requirement described here also applies to a bargaining unit member who takes sick leave or more than 3 consecutive working days to attend to the illness of the member's child, spouse, or parent.
- E. All sick leave shall be approved by the department head.
- F. Bargaining unit members employed on a permanent part-time basis shall be entitled to receive sick leave benefits at one-half the regular rate.
- G. If an employee sustains an illness or injury which is incurred in the course of employment with the City, he/she shall receive full pay for the waiting period following such disability as defined by state law. Such compensation shall not be deducted from the employee's sick leave credit.
- H. City agrees to meet and confer with the Bargaining Unit to establish a "Catastrophic Sick Leave" Policy on a citywide basis during the 2006-2007 Fiscal Year.

**Section 2 - Sick Leave — Cash Compensation for Disability:** When an employee incurs an on-the-job disability, he/she may request and receive cash compensation in lieu of sick leave to make up the difference between the employee's net salary and the amount he/she receives in state workers' compensation insurance benefits while disabled.

**Section 3 - Sick Leave — Cash Compensation Upon Separation from Employment:** Upon separation from City employment, cash compensation shall be paid for accumulated sick leave as follows:

- A. Every person who has 20 to 39 days of accumulated sick leave shall receive ½ his/her regular monthly pay.
- B. Every person who has 40 or more days of accumulated sick leave shall receive 1 month full pay.

**Section 4 - Additional Sick Leave:** After exhaustion of paid sick leave, an employee who is ill or injured may, upon written request, use accumulated vacation or other credited paid leaves to avoid leave without pay.

**Section 5 - Return After Extended Illness:** If, during the period covered by Additional Sick Leave or Medical Leave, an employee is physically able to return to work, he/she shall be immediately returned to the position and classification held prior to the leave, without loss of benefits or seniority.

## **ARTICLE 10 — VACATION**

**Section 1 - General Provisions.** Vacation leave with pay is an employee's earned right to be granted in accordance with City policy consistent with the terms of this Implemented LBFO-MOU.

**Section 2 - Number of days:**

- A. Every person who has been in the continuous employ of the City for 6 full months, except temporary, seasonal and part-time employees, shall receive 8 hours vacation for each full month of employment or major portion thereof.
- B. Every person who has been in the continuous employ with the City from 1 to 4 years shall receive 96 hours vacation.
- C. Every person who has been in continuous employ with the City from 5 to 9 years shall receive 128 hours vacation.
- D. Every person who has been in the continuous employ with the City from 10-14 years shall receive 144 hours vacation.

- E. Every person who has been in continuous employ with the City for 15 years or more shall receive 176 hours vacation.

**Section 3 - Permanent Part-time:** Bargaining Unit members employed on a permanent part-time basis shall be entitled to receive vacation at one-half (½) the regular rate.

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**Section 4 - Scheduling:** Vacation leave shall be scheduled and approved by the department head. Supervisors will make every effort to grant vacation at times preferable to the employees, consistent with work requirements and the providing of City services.

**Section 5 - Accumulation:** Effective January 1, 2006, a bargaining unit member ceases earning vacation once he or she accumulates the total number of hours that can be earned in his or her prior two (2) years of service. The total number of hours that can be earned by a member is based on each member's length of continuous employment with the City.

**Section 6 - Separation from City:** Upon separation from City employment, compensation shall be paid for vacation leave which has been earned but not taken.

**Section 7 - Paid Vacation Restriction:** No paid vacation leave shall be allowed except earned vacation leave.

**Section 8 - Vacation Liquidation:** Leave may be taken up to the full amount accrued at time of vacation, or it may be taken 1, 2 or 3 weeks at a time if approved by the supervisor. Vacation of less than 1 week including fractions of a day shall only be granted upon prior written request and approval of the supervisor which approval shall not be unreasonably withheld. At the request of the employee, vacation leave may be used concurrently with Workers' Compensation benefits. However, total benefits shall not exceed normal compensation.

## **ARTICLE 11 — OTHER LEAVES**

**Section 1 - Bereavement Leave.** Whenever an employee is absent from work because of death in the immediate family, he/she shall be entitled to 3 paid working days, and up to 5 total working days for out of County travel, with the additional day(s) taken from accrued time.

- A. The immediate family includes any of the following: Father; Father-in-law; Mother; Mother-in-law; Sister; Sister-in-law; Brother; Brother-in-law; Wife; Husband; Son; (includes step-son); Daughter (includes step-daughter); Grandfather; Grandmother; Son-in-law; Daughter-in-law; Grandchildren; Uncle, Aunt; Niece; Nephew; Cousin.
- B. The granting of this leave shall not affect the employee's vacation.

- C. All bereavement leave must be reported on payroll time sheets, with an indication of the relationship of the deceased family member.

**Section 2 - Jury Duty.** City employees are not excused from jury duty. Leave for jury duty will be granted with pay.

**Section 3 - Unpaid Leave of Absence:** Every person who is employed by the City may be allowed a leave of absence without pay by his department head not to exceed 5 working days. Every person who has been in the continuous employ of the City for 6 full months, except temporary or seasonal employees, may be allowed a leave of absence without pay upon recommendation of the department head with approval of the City Manager not to exceed 90 days. An employee shall not be entitled to receive the benefits of vacation, holiday or sick leave provisions of this Implemented LBFO MOU while on such leave, but shall continue to receive the benefits of continuous service.

**Section 4 - Military Leave:** Military leave shall be granted in accordance with the provisions of state law. Every employee entitled to receive the benefits of military leave shall give his department head the opportunity, within the limits of military necessity, to determine when such leave shall be taken.

## **ARTICLE 12 — HEALTH BENEFITS**

**Section 1 - Life Insurance:** The City shall provide \$50,000.00 in life insurance coverage and \$50,000.00 for accidental death and dismemberment for each employee. The City will also provide \$2,500.00 life insurance for each employee's spouse, and \$2,500.00 life insurance for each employee's dependents.

**Section 2 - Group Medical/Dental/Vision Insurance:** The City agrees to contribute up to the following amounts toward medical/dental/vision insurance coverage per month:

Family:	<del>\$761.26</del> <b>\$827.00</b>
Single:	<del>\$360.54</del> <b>\$361.00</b>

The City and the Union agree that the City's Health Plan will no longer cover lifestyle (not medically necessary) prescription drugs.

The City and the Union agree to a change in the City's Health Plan. The City agrees to pay 100% of the employee portion of the medical premiums from September 1, 2009 until June 30, 2010. ~~The City agrees to pay the full costs of the increased medical expenses between July 1, 2008 and December 31, 2008, for the insurance plan that is selected. The bargaining unit member agrees to pay half of the increased cost of the medical care expenses from January 1, 2009 to June 30, 2009 for the insurance plan that is selected, but in any event, no more than the costs of Option 3.~~

***(Substantive changes indicated in this Section made per Unilateral Implementation by the City Council in Resolution No. 09-62.)***

**Permanent Part-Time Employees Medical Plan:** Beginning January 1, 2002, a capitated medical plan will be made available to permanent part-time employees limited to medical services provided in Mexicali, B.C., Mexico by Almater Hospital and containing a maximum yearly benefit amount of \$15,000.00. The premium of \$75.00 per month for this medical plan will be paid  $\frac{1}{2}$  by the permanent part-time employee and  $\frac{1}{2}$  by the City.

### **Section 3 – Disability Insurance:**

**State Disability Insurance (SDI):** The City will make State Disability Insurance ("SDI"), a partial wage-replacement insurance plan available to city employees effective fiscal year 2006-2007. SDI will be funded through employee payroll deductions. SDI will provide benefits to city employees who suffer a loss of wages when they are unable to work due to a NON WORK-RELATED illness or injury, or a medically disabling condition from pregnancy or childbirth.

**Section 4 – Employee Cafeteria Plan-** The City will offer a flexible benefit plan also known as a "cafeteria" plan available to employees based on the concept of employee choice. Under this plan, employees have the opportunity to individually select the type of benefits and the level of coverage desired from a menu of options offered by the City during the annual open enrollment period.

The City's cafeteria plan will offer pre-tax and after-tax options and is not subject to ERISA.

~~Effective on the date of ratification and approval of this MOU, as defined by Article 1, section 2 herein, the only permitted choices of benefits for employees authorized under the Employee Cafeteria Plan are benefits from those providers, which have a contractual relationship with the City.~~

**Open Enrollment Period:** The City will allow an annual open enrollment period of not less than 30 days for employees prior to the start of the plan year for the next fiscal year, so that employees can choose benefits from the cafeteria plan.

### **Section 5–Employee Wellness Benefit-**

~~The City shall provide each employee with a \$200.00 wellness benefit per year, which is separate from the medical cap as set forth in Article 12, Section 2, but can be used in addition to the amount specified in Article 12, Section 2. Employees may use this \$200.00 amount to purchase wellness programs from the cafeteria plan. The wellness~~



~~benefit may also be used to offset any medical, dental, or vision premiums. The employee shall not be entitled to a cash pay-out of the \$200.00 benefit. If the employee does not utilize all or any of the \$200.00 wellness benefit during the plan year, the employee will lose the unused amount. The \$200.00 wellness benefit does not cumulate from year to year.~~

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***(Substantive changes indicated in this Section made per Unilateral Implementation by the City Council in Resolution No. 09-62.)***

**Section 6 – Waived Health Insurance Benefit:** The City provides a health allowance for those employees who opt out of the health insurance coverage for the following reasons: 1) employee's spouse has a more attractive benefit package through the spouse's employer; and/or 2) employee is married to another City employee. The monthly health allowance is \$385.10 for family and \$182.24 for single. Employees may use the health allowance to enhance their dental program or to purchase additional supplemental coverage through contracted medical providers with the City. Employees will have an opportunity to change their coverage only during open enrollment.

**Section 7 – Payroll Deductions:** If an employee requests that the City make a payroll deduction to allow for payment of a service or benefit through a non-medical and/or non-contracted provider with the City, a biweekly processing fee of \$5.00 will be added by the City to pay for the processing of the payroll deduction and payment. This \$5.00 processing fee shall not apply to payroll deductions for union dues.

**Section 8 – Retiree Health Plan:**

- A. The Retiree Health Plan Policy adopted by the City Council in May 18, 1993 outlines the criteria for the retiree health for those hired on or after May 18, 1993.
- B. Post-1993 Retiree Health Coverage: Any employee hired on or after May 18, 1993 shall pay a medical contribution based on the current cost of the City's health plan and upon the years of City service upon their retirement from City service. The medical coverage will cap at age 65.
- C. Pre-1993 Retiree Health Coverage: For those employees who were hired before May 18, 1993 and who elect to continue coverage with the City's health plan upon their retirement from City service, they shall be entitled to lifetime medical coverage. Cost of the coverage shall be \$120.00 a month. At age 65, the City's health plan shall become secondary and Medicare shall be primary, and all claims shall be adjudicated accordingly. Any eligible employee, hired before May 18, 1993, who retires from City service after July 1, 2008, shall have the option of either selecting Pre-1993 Retiree Health Coverage, as described herein, or, in the alternative, if the employee chooses, the employee may elect the Post-1993 Retiree Health Coverage.

- D. Employees who are hired after July 1, 2008 shall not be entitled to medical insurance coverage when they retire from City service.
- E. Any employee who separates from City service shall be provided with COBRA notification by the City's Third Party Administrator. The City's Third Party Administrator shall handle the processing and collecting of retiree health contributions.
- F. Any retiree who is three (3) months delinquent from paying retiree health contributions shall be removed from the retiree medical coverage. Any retiree removed from the health plan for non-payment shall not be allowed to re-enroll in the health program. Any retiree who is removed from the health plan for non-payment shall be provided with COBRA notification by the City's third party administrator.

### **ARTICLE 13 — RETIREMENT PLAN**

**Section 1 - PERS Retirement:** The City agrees to continue to contract for the PERS 2% at 60 retirement plan. The City agrees to pay the 7% employee retirement contribution. It is the City's goal and commitment to research different retirement formula options to benefit the employees. Therefore, throughout the term of this Implemented LBFO MOU, the City will actively research possible retirement formula options. However, the City is not obligated to adopt any different retirement formulas during the term of the Implemented LBFO-MOU, unless mutually agreed upon by both the employer and bargaining group.

**Section 2 - Social Security:** All employees shall be responsible for payment of the employee's full share of the Federal Insurance Contribution Act (FICA) tax, which includes Social Security and Medicare, at the contribution limits established by federal law.

~~Those employees that are "Y" rated or at the top step will receive a one-time 5% salary adjustment during the term of this MOU. Such salary adjustment shall be given at the time the employee is first required to pay his/her full share of the employee contribution for social security/FICA.~~

*(Substantive changes indicated in this Section made per Unilateral Implementation by the City Council in Resolution No. 09-62.)*

### **ARTICLE 14 — AGENCY SHOP**

**Section 1 - Check off:** The Union shall have the sole and exclusive right to have membership dues and service fees deducted for employees in the bargaining unit by

the City. The City shall, upon appropriate written authorization from any employee, deduct and make appropriate remittance for insurance premiums, credit union payments, savings bonds, charitable donations, COPE or other plans or programs. The City shall pay to the designated payee within 15 days of the deduction all sums so deducted.

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**Section 2 - Dues Deduction:**

- A. The City shall deduct, as a condition of employment, in accordance with the Union dues and service fee schedule, dues or service fees from the wages of all employees who are members of the bargaining unit on the date of the execution of this Implemented LBFO Agreement.
- B. The City shall deduct dues, in accordance with the dues, from the wages of all employees who, after the date of execution of this Implemented LBFO Agreement, become members of the Union and submit to the City a dues authorization form.
- C. The City shall immediately notify a Union representative if any member revokes a dues authorization.

**Section 3 - Maintenance of Membership:**

All Union-represented employees who, on the effective date of this Implemented LBFO MOU are members of the Union in good standing and all such employees who thereafter voluntarily become Union members, shall (as a condition of employment) maintain their Union membership in good standing during the term of the Implemented LBFO MOU, subject however, to the right to resign from membership effective during any of the following resignation periods:

- A. The first 30-day period after the effective date of Union and the City adopt and ratify this Implemented LBFO MOU;
- B. The first 30-day period after an employee initially falls within the coverage of this section;
- C. The first 30-day period of the subsequent contract years, if any, of the Implemented LBFOMOU.

Any Union member may exercise his or her rights to resign by giving written notice to the Union and to the City prior to or during the above resignation periods.

Whenever an Union member shall be delinquent in the satisfaction of his or her obligations as describe in this section, the Union shall simultaneously give both the employee and the City's Human Resources Director written notice thereof, which notice shall give the employee 15 days to cure the delinquency. In the event the employee

fails to cure said delinquency, the Union shall request, in writing, that the City initiate termination proceedings. The termination proceedings shall be governed by applicable laws and are specifically excluded from the Grievance Procedure.

#### **Section 4 - Representation Service Fee:**

- H. All permanent, non-management, non-police officers, and non-confidential employees who are represented by the Union or who attain such status after the effective date of this Implemented LBFO-MOU, and who chose not to become members of the Union (hereafter "non-member unit employees"), shall be required to pay to the Union, as a condition of employment, a service fee that represents each such employee's proportionate share of the Union's cost of representation, beginning 30 days after this Implemented LBFO is effective the MOU is ratified and adopted by the Union and the City, or after the union has provided such employees and the City with the legally requisite expenditure information described below, whichever, is latest. Such service fee shall in no event exceed the regular, periodic membership dues paid by Union members. The City agrees to deduct such fees, in accordance with the law and the provisions of this section, through a bi-weekly payroll deduction.
- I. The representation service fee arrangement provided by this section may be rescinded by a majority vote of those eligible to vote and as determined in a secret ballot election in which all unit members are eligible to vote provided that: 1) a request for such vote is supported by a petition containing the signatures of at least 30% of all unit members; and 2) the vote may be taken at any time during or after the term of the Implemented LBFO-MOU, but in no event shall there be more than one vote taken during any calendar year. The sufficiency of a petition shall be determined, and the election shall be conducted, by the State Mediation and Conciliation Service if the Union and the City cannot agree on the selection of another neutral person or entity to conduct the election. The Union and the City shall split the costs, if any, for conducting such election.
- C. A non-member unit employee who is subject to the payment of a representation service fee hereunder, shall have the right to object to any part of that fee payable by him or her which is in aid of Political Action committees, or of activities or causes of a partisan political or ideological nature, or that is applied toward the cost of benefits available only to Union members, or that is utilized for expenditures that are not necessarily or reasonably incurred for the purpose of performing the duties incident to meeting and conferring or administering the Implemented LBFO-MOU.
- D. The Union shall be fully responsible for expending funds received under this article in a manner that is consistent with all legal requirements and limitations for expenditures of representation service fees or employee dues which are applicable to public sector labor organizations. Prior to a non-member unit employee having any obligations to pay a representation service fee hereunder, the Union shall make available a detailed financial report in the form of a

balance sheet and an operating statement certified as to its accuracy and completeness by its President and Treasurer or corresponding Principal Officer or by a Certified Public Accountant. A timely copy of financial reports required under or referred to in the Labor-Management Disclosure Act of 1959 or Government Code Section 3546.5 shall satisfy this requirement. The Union agrees to update and provide this financial information to unit employees and the City on or before September 1 of each calendar year. This financial information must itemize and adequately describe all categories of expenses. This financial information must cover local expenditures as well as uses made by county, state, national and international organizations with which the Union is directly or indirectly affiliated and to whom the Union transmits a portion of its dues and/or representation service fee funds.

- E. The Union shall make available, at its expense, an expeditious administrative appeals procedure to non-member unit employees who object to the payment of any portion of the representation service fee. Such procedure shall provide for a prompt decision to be made and the impartial decision-maker jointly selected by the union and the objecting employee(s). The Union shall make available a copy of such procedure to non-member unit employees and the City prior to the time that any non-member unit employee becomes subject to the payment of representation service fees.
- F. Any non-member unit employee who is a member of a bona fide religious, body, or sect which has historically held conscientious objections to joining or financially supporting employee organizations shall not be required to pay the representation service fees described in this section. This exemption shall not be granted unless and until such unit member has certified his or her bona fide membership under penalty of perjury. Such employee must, instead, arrange with the Union to satisfy his/her obligation by donating the equivalent amount to a non-labor, non-religion charitable fund, tax exempt under Section 501(c)(3) of the Internal Revenue Code (IRC), chosen by the employee, from the following: Red Cross, Casa Via Nueva, or Salvation Army. Proof of such payments shall be submitted to the City on a monthly basis as a condition of continued exemption from the representation service fee requirement.
- G. When an authorized agent of the City is served with written notice by a non-member unit employee or employees, or by the Union, that a dispute exists involving employee rights with respect to: 1) representation service fee expenditures or associated Union obligations; or 2) the employee exemption described in this section, the City and/or the Union shall thereafter deposit such disputed dues or fees in an interest bearing escrow or comparable account pending final resolution of the dispute, and shall so advise, in writing, the other and the complaining employees. The City shall not be obligated to take any other or further action pending the resolution of the dispute. Final resolution as used in this subdivision shall mean resolution of the dispute by way of legally binding settlement agreement between the employee(s) and the Union, or non-appeal able final judgment of an administrative agency, the Public Employment

Relations Board and/or court of competent jurisdiction. The sole obligation of the City with respect to such disputes is as set forth in this paragraph. The City shall not be made a party to administrative or court proceedings, except to the limited extent when such administrative body and/or court determine such to be necessary for the purpose of enforcing its order or judgment. In such event, the Union shall pay the City's attorneys' fees and costs, as further described in this section.

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- H. Whenever an Union-represented employee shall be delinquent in the satisfaction of his or her obligations as described in this section, the Union shall simultaneously give both the employee and the City's Human Resources Director written notice thereof, which notice shall give the employee 15 days to cure the delinquency. In the event the employee fails to cure said delinquency, the Union shall request, in writing, that the City initiate termination proceedings. The termination proceedings shall be governed by applicable laws and are specifically excluded from the Grievance Procedure.
- I. The City shall not be obligated to make the bi-weekly payroll deductions described in this section during any period when an employee is in an unpaid status, or does not have enough earnings to pay the dues or fees. Notwithstanding any other provision in this Implemented LBFO-MOU, an employee's failure to make sufficient earnings to pay the representative service fee does not constitute grounds for termination.
- J. The parties acknowledge that the Miscellaneous Employee's Bargaining Unit does not contain management, supervisory, Meyer-Millas-Brown Act (MMBA) "Confidential", public safety, probationary or temporary employees, and that the law precludes the parties from applying agency shop requirements to such employees.
- K. Except as provided herein, representation service fees that the City withdraws from payroll shall be transmitted to the Union Officer designated in writing by the Union as the person authorized to receive such funds, at the address specified.
- L. The representation service fee obligations described in this section shall continue in effect, unless rescinded pursuant to the procedure described in this section, for as long as the Union is the recognized collective bargaining representative of those in the Miscellaneous Employees Bargaining Unit, notwithstanding the expiration of the Implemented LBFO-MOU between the City and the Union.
- M. The Union hereby agrees to defend, indemnify and hold harmless the City and its officers and employees from any claim, loss, liability or cause of action of any nature whatsoever arising out of the operation of this Article. The Union's indemnity and liability obligation is more fully set forth as follows:
  - 1. The Union shall defend, indemnify and hold harmless the City and its

officers and employees from any claim, loss, liability, cause of action or administrative proceeding arising out of the operation of this Article. Upon commencement of such legal action, administrative proceeding, or claim, the Union shall have the right to decide and determine whether any claim, administrative proceeding, liability, suit or judgment made or brought against the City or its officers and employees because of any application of this Article shall or shall not be compromised, resisted, defended, tried or appealed. Any such decision on the part of the Union shall not diminish The Union's defense and indemnification obligations under the Implemented LBFO Agreement.

2. The City, immediately upon receipt of notice of such claim, proceeding or legal action shall inform the Union of such action, provide the Union with all information, documents, and assistance necessary for the Union's defense or settlement of such action and fully cooperate with the Union in providing all necessary employee witnesses and assistance necessary for such defense. The cost of any such assistance shall be paid by the Union.

3. The Union, upon its compromise or settlement of such action or matter shall timely pay the parties to such action all such sums due under such settlement or compromise. The Union, upon final order and judgment of a Court of competent jurisdiction awarding damages or costs to any employee, shall pay all sums owing under such order and judgment.

## **ARTICLE 15 — PROBATION**

### **Section 1 - Probationary Period.**

- A. Probationary period will permit both the supervisor and the employee to become acquainted and to determine the adaptability and fitness of the employee to the assigned work.
- B. All new employees hired on or after January 1, 2003, shall be subject to a probationary period of nine (9) months. This includes those employees who obtain promotions which are effective after that date. All employees who are hired after January 1, 2003 and all employees who are promoted after January 1, 2003 will be subject to the nine (9) month probationary period.

## **ARTICLE 16 — SAVINGS, ZIPPER & DURATION**

**Section 1 - Savings Clause:** If any provision of this Implemented LBFO-MOU is held to be contrary to law by a court of competent jurisdiction or legislation, that provision shall be deemed invalid, but all other provisions shall continue in full force and effect, and the City and the Union shall meet and confer to address any impact that the legislation has on the terms and conditions of employment.

**Section 2 - Zipper Clause:** ~~This MOU~~ This Implemented LBFO sets forth the full and entire understanding of the parties regarding matters set forth herein, and any and all prior or existing MOU's understandings, or agreements that conflict with the matters set forth herein, whether formal or informal, are hereby superceded and terminated in their entirety. Existing policies, rules, ordinances and resolutions that do not conflict with the matters set forth herein remain in effect. Each party agrees that the other shall not be obligated to bargain collectively with respect to any subject matter referred to or addressed in this Implemented LBFO-MOU during the term of this Implemented LBFO, unless required by law ~~this MOU~~. It is the intent of the parties that this Implemented LBFO-MOU be administered and observed in good faith. Any additions or changes in this Implemented LBFO-MOU shall not be effective unless reduced to writing and properly ratified and signed by both parties.

**Section 3 - Term of Implemented LBFOMOU:**

The term of this Implemented LBFO-MOU shall be effective July 1, 2009~~8~~, and shall remain in full force and effect through June 30, 2010~~09~~, at which time all terms and conditions of this Implemented LBFO-MOU shall be terminated.

**ARTICLE 17 — CLASSIFICATION**

**Section 1 - Reclassification:** Whenever the duties actually performed by an incumbent in a position are not actually reflected in, or reasonably related to, the specific statement of duties required to be performed, and the duties will be extended or needed on a continuing basis, the incumbent shall be entitled to have the position reclassified. It is the intent of this Section to provide for reclassification where there has been an increase in, or change in, the duties being performed by incumbents in such positions, where such increases or changes are not temporary in nature. Reclassification is distinct and separate from "temporarily working out of class" and from the upgrading of salary ranges of positions where the duties have not changed. Working out of class is covered elsewhere in this Implemented LBFO-MOU.

**Section 2 - Reclassification Procedure:** Employee submits request to immediate supervisor. Supervisor reviews request and submits to department head. Personnel Director makes final determination in conjunction with the approval of the City Manager. All reclassifications shall not be final until approved by City Council.

**Section 3 - Effect:** Nothing in this Article changes the parties' rights and duties under the law.

**ARTICLE 18 — OCCUPATIONAL SAFETY AND HEALTH**

**Section 1 - General Provisions:** The City agrees to provide each employee any and all safety equipment as determined and approved by the City Manager and Cal-OSHA annually if deemed necessary.



**Section 2 - Investigation:** The City should, upon request of an employee, investigate reported case of contagious and/or infectious diseases or other health/safety problems which are likely to be detrimental to the health or safety of the employee.

**Section 3 - Right to Refuse Unsafe/Unhealthful Work:** Employees have the right to refuse performance of work he/she reasonably believes poses an imminent hazard to his/her health or safety, or the health or safety of fellow employees or the public. This right of refusal is independent of any right of refusal provided by law and is not contingent on performance of the work being in violation of any standard or order of OSHA or Cal-OSHA.

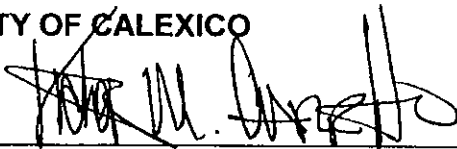
**Section 4 - No Discrimination:** No employee shall be in any way discriminated against as a result of reporting conditions believed to be health/safety hazards.

**Section 5 - Health/Safety Committee:** The City has established a health and/or safety committee. The Union shall have the right to appoint a representative and one alternate to serve on said committee.

#### **ARTICLE 19 — Labor-Management Committee**

- A. A Labor-Management Committee shall be established for the purpose of discussing matters of mutual concern outside of the scope of representation and matters related to the administration of this Agreement.
- B. The Committee shall be composed of three representatives (3) of the bargaining unit and one (1) staff representative from the Union and up to four (4) representatives of the City.
- C. The committee shall meet at least quarterly, or upon the written notification of either party for the purpose of discussing matters of mutual concern. Grievances and disciplinary actions shall not be discussed at such meetings. Matters subject to the duty to bargain may be discussed, however, the Labor-Management Committee shall not have the authority to add to, amend, or modify this agreement.

**CITY OF CALEXICO**



Victor Carrillo, City Manager

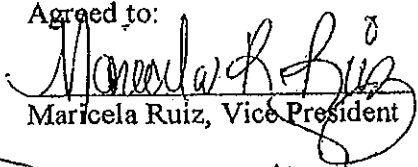
Date

**ADDENDUM TO  
MEMORANDUM OF UNDERSTANDING (MOU)  
BETWEEN THE CITY OF CALEXICO  
AND THE  
CALEXICO MUNICIPAL EMPLOYEES ASSOCIATION  
March 3, 2000**

Following negotiations between the City of Calexico and representatives of the Calexico Municipal Employees Association, it is agreed as follows:

1. The Memorandum of Understanding for the year 1999/2000 with the exception of the below described changes shall become the Memorandum of Understanding to be followed during the fiscal year 2000-2001 with other issues to be negotiated at a later date.
2. This is to establish a bilingual pay section for the Calexico Municipal Employees Association. It will entitle members of this unit to 3% compensation of base salary if qualified. To qualify the member must pass an oral exam. The individual conducting said exam must be qualified and designated by the City Manager. This section is to become effective as soon as Council approval is provided.
3. The following positions will receive \$150.00 per month compensation because of the confidentiality of issues being handled (Confidential Employees). This will become effective upon Council approval.
  1. *Fire Administrative Assistant*
  2. *Police Administrative Assistant*
  3. *Police Records Supervisor*
  4. *Finance Department Senior Account Clerk*
  5. *Community Development Block Grant Secretary*
  6. *Police Evidence Clerk*
  7. *Redevelopment Agency Executive Secretary/Specialist*

Agreed to:

  
Maricela Ruiz, Vice President

  
Maria Guadalupe Martinez, Board Member

  
Gilbert B. Grijalva, Mayor

Council Approval Date: 3/8/00

**FILE COPY**

**APPENDIX C - MINOR & MAJOR OFFENSES**

**Minor Offenses:** The following are examples of offenses which are normally cause for disciplinary action: Verbal Consultation, Written Consultation. It is also possible, if the offense was serious enough, that discharge could occur.

Violation of any of the following may be considered cause for disciplinary action or discharge, depending on the seriousness of the violation:

1. Repeated tardiness or absenteeism, even though reported;
2. Soliciting or collecting contributions for any purpose during actual working hours without permission of your supervisor or City Manager;
3. Rude or insolent conduct towards residents;
4. Loafing or other abuse of time during working hours;
5. "No Call In" - Failure to report an absence prior to the start of the shift;
6. Any act or conduct which might endanger the safety of others;
7. Failure to report an injury or accident immediately;
8. Use of profane, abusive, or threatening language toward fellow employees, Company officials, or residents;
9. Smoking in an unauthorized area, or at times not permitted;
10. Distributing or posting written or printed matter of any description at any time in the working areas on City premises without written permission;
11. Violations of Company Policy or Procedure which have been given to the employee, posted, or read to the employee;
12. Defacing bulletin boards or notices posted thereon;
13. Any action which is detrimental to the orderly conduct of the business of the City;
14. Gambling in any form, on City premises.

Minor offenses to be removed after twelve (12) months.

**Major Offenses:** The following are examples of what may be termed major offenses. These are willful and/or deliberate violations of safety rules to such a degree that continued employment is not desirable. Discharge will be the normal action taken. However, a written consultation or a disciplinary layoff could be used if there are mitigating circumstances.

1. Willfully falsifying any records, including employment applications or bond applications;
2. Marking the time sheet of another or falsifying a time card or time sheet;
3. Leaving the Company premises during working hours without permission of supervisor;
4. Deliberately abusing, destroying, damaging, or defacing City property, equipment, merchandise, or the property of others on City premises;
5. Removal of any City merchandise or City property unless paid for, or with the signed authorization from City;
6. Fighting or striking, or attempting to strike, or otherwise injuring another on City premises (any employee directly involved);
7. Bringing liquor, narcotics or dangerous drugs into the City premises or consuming liquor or using narcotics or dangerous drugs on City premises or reporting for duty under the influence of liquor, narcotics, or dangerous drugs;
8. Carrying firearms or other dangerous weapons on City premises;
9. Failure to return to work on expiration of vacation or leave, or after being released by a doctor;
10. Insubordination - willful refusal to follow instructions of a supervisor;
11. Absence from work without authorized leave (unless due to bonafide illness);
12. Going into restricted areas without authorization, or unauthorized presence on City property outside regular City hours;
13. Misusing or removing from the premises without written authorization, City tools, equipment, employee lists, City records, or confidential information of any nature;
14. Willful, deliberate or repeated violations of safety, fire, or sanitary regulations.

Major offenses to be removed after eighteen (18) months.